



VIRGINIA REAL ESTATE BOARD

VREB *Speaking*

www.dpor.virginia.gov

FALL 2006

Virginia Real Estate Board
3600 W. Broad St., 5th Fl.
Richmond, VA 23230
Timothy Kaine
Governor
Patrick Gottschalk
Sec., Commerce & Trade

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2006 Meeting Dates

All meetings are held on the 4th Floor of the Department of Professional and Occupational Regulation, at the address above.

February 2, 2006

March 23, 2006

May 11, 2006

July 13, 2006

September 14, 2006

December 5, 2006

Message from the Chair

This column is written three months in advance and I try to make the column relevant. We had hoped to get the new proposed Rules and Regulations adopted by the Board during the summer and it just did not happen. We certainly should have them approved and available to you by the time you read this in the early fall. Log onto www.dpor.virginia.gov; then go to Regulatory Boards; then Real Estate, then Pending Regulatory Action.

The 2006 Virginia General Assembly passed new laws regarding additional disclosure requirements, which have been added to the Disclosure/ Disclaimer forms available online at the board's website. From

the board's home page, click on Real Estate Transaction Consumer Information to access the new disclosure information.

The 2006 General Assembly recognized that our business is getting more complex and consumers are demanding more from us, so they made it a requirement that you had to have a high school diploma or GED to sit for the exam. The goal is to enhance professionalism.

Last, but not least, dual agency continues to be a challenge for you and VREB. While it is perfectly legal, it can be a recipe for disaster. If you are representing a seller and a buyer walks up to you and wants to buy the property, nothing requires you to insist that the buyer has



representation. Your responsibility is to disclose the agency relationship you have with the seller, to the buyer. The obvious FLAW in dual agency is the agents' inability to represent both parties completely with each party's best interests in mind.

Until next time,
Schaefer

Regulatory Review

On May 1, 2006, the Board filed the Notice of Intended Regulatory Action (NOIRA) for the rules and regulations.

At the meeting on July 13, 2006, the board adopted the proposed regulations, which will be submitted for

review on the Town Hall website.

On May 29, 2006, the Board filed a NOIRA for the Common Interest Community Management Information Fund regulations. To check the status of these two filings and the

stages of the regulatory process, log onto www.townhall.state.va.us.



Highlights from the 2006 General Assembly

The following legislation was enacted by the 2006 General Assembly. For additional information, log onto to <http://dls.state.va.us>; click on Legislative Information System.

HB 128/SB 430 - §§ 15.2-852, 15.2-2289 and 55-79.43 Condominium Act; applicants in land use matters

HB 211 - § 54.1-2105 Real Estate Board; educational requirements

HB286 - § 55-519 Residential Property Disclosure Act; disclosure of pending enforcement actions

HB 316 - §§ 54.1-2105, 54.1-2130 through 54.1-2134, 54.1-2138, 54.1-2141, 54.1-2138.1 and 54.1-2145 Real Estate Board; limited

service agents

HB 553 - § 19.2-8 Occupational and professional misdemeanor violations; statute of limitation

HB 558 - §§ 55-79.40, 55-79.74:3, 55-79.79 and 55-79.90 Condominium Act; breach of warranty actions



HB 693 - §§ 55-370, 55-373, 55-374, 55-374.1, 55-383, 55-394.1, 55-370.01 and 55-376.2 Time-Share Act; non-judicial foreclosure

HB 1236 - § 36-96.2 Fair Housing Law; restrictive covenants; single-family house provisions

HB 1562 - § 55-518 Residential Property Disclosure Act; previous mining and presence of abandoned mines

HB 1554 - § 55-519 Seller of historic property

SB 269 - § 55-79.92 Condo. Act; conversions; notice to locality

SB 670 - § 55-519 Disclosure of resource protection areas

Comments on Brokerage Supervision

From Carol Clarke, Board Member

There has been much comment across the Commonwealth relevant to what is adequate brokerage supervision. As a refresher, please refer to the Board's regulations, section 18 VAC 135-20-160.D, "Factors to be considered in determining whether the supervision is reasonable and adequate include, but are not limited to the following:

The availability of the supervising broker to all licensees under the supervision of the broker to review and discuss contract provisions, brokerage agreement provisions and advertising;

The availability of training and written procedures and policies which provide, without limitation, clear guidance in the following areas:

- Proper handling of escrow deposits
- Compliance with federal and state fair housing laws and regulations if the firm engages in residential brokerage, residential leasing or residential property management;

- Advertising;
- Negotiating and drafting of contracts, leases and brokerage agreements;
- Use of unlicensed individuals;
- Agency relationship;
- Distribution of information on new or changed statutory or regulatory requirements;
- Disclosure of matters relating to the condition of the property;
- Such other matters as necessary to assure the competence of licensees to comply with this chapter and Chapter 21 of Title 54.1 of the Code of Virginia. "

The Board expects all brokers to have written policy and procedures in place and available to all licensees. It is a good idea for the broker to either give each licensee a copy of the firm's policies and procedures or have documentation that all licensees have read and understand the firm's policies and

cedures.

The definition of training is a bit harder to "put your arms around". In some ways it is easier for the Board to identify when training is NOT adequately available.

A broker is ultimately responsible for the training, guidance and supervision of licensees. Taking this role seriously is expected and the Board is looking more closely at cases where the broker should have known and given guidance to a licensee to prevent a violation from occurring.

The role of the Board is to insure the public is well served by real estate licensees and brokers. Problem prevention through "hands on" supervision, training and guidance in all areas, is applauded and encouraged. WE will continue to hold brokers accountable for the actions of the licensees within their firms, and the fine amounts, imposed by the Board for sanctions against both licensees and brokers, is rising, to send a message that we expect accountability.

New Legislation

HB 286 amends § 55-519 of the Code, and requires changes to be made to the Residential Property Disclosure Statement. Specifically, the new law states: *The disclosure and disclaimer forms shall contain a notice to purchasers that whether the owner proceeds under subdivision 1 or 2 of subsection A, the owner represents that there are no pending enforcement actions pursuant to the Uniform Statewide Building Code (§ 36-97 et seq.) that affect the safe, decent, and sanitary living conditions of the property of which the owner has been notified in writing by the locality.* The Board has revised the Disclosure and Disclaimer Statements and they are available on the website.



HB 211 amends § 54.1-2105(B) to require as a condition of licensure, that applicants have at a minimum, a high school diploma or its equivalent.

HB 316 amended sections 54.1-2105, 54.1-2130 through 54.1-2134, 54.1-2138 and 54.1-2141 and added sections 54.1-2138.1 and 54.1-2145.

54.1-2105(E) to include additional educational requirements, effective July 1, 2007. Specifically: *The Board shall approve a continuing education curriculum of not less than two hours, and as of July 1, 2007, every applicant for relicensure as an active salesperson or broker shall complete at a minimum one two-hour continuing education course on limited service agency prior to renewal or reinstatement of his license. If the licensee submits a notarized affidavit to the Board which certifies that he has taken a two-hour continuing education course on limited service agency between July 1, 2006, and June 30, 2007, offered by a school approved by the Board, which, in the determination of the Board, covered substantially the information in a continuing education course approved by the Board subsequent to July 1, 2007, the licensee may receive credit for the two hours of continuing education. If the licensee submits a notarized affidavit to the Board which certifies that he does not practice residential real estate and shall not do so during the licensing term, training in limited service agency shall not be required. A licensee who takes one two-hour continuing education class on limited service agency shall satisfy the requirements for continuing education and may but shall not be required to take any further continuing education on limited service agency. This is a one time only requirement which applies to active licensees renewing their license between July 1, 2007 and June 30, 2009.*

Salespersons and brokers with active licenses, who are required to complete continuing education, have a new course requirement.

54.1-2130. The definitions for *agency* has been revised to include *representation of a client as a standard agent or a limited service agent*. The definitions for *brokerage agreement* has been revised to mean *the agreement by which a real estate licensee represents a client in a brokerage relationship*. The definitions for *standard agent* has been revised to mean *a licensee who acts for or represents a client in an agency relationship*. A *standard agent* shall have the obligations as provided in this article and any additional obligations agreed to by the parties in the brokerage agreement. A new definition for *limited service representative* has been created, as follows: *"Limited service representative" means a licensee who acts for or represents a client with respect to real property containing from one to four residential units, pursuant to a brokerage agreement that provides that the limited service representative will not provide one or more of the duties set forth in subdivision A 2 of §§ 54.1-2131, 54.1-2132, 54.1-2133, and 54.1-2134, inclusive. A limited service representative shall have the obligations set out in the brokerage agreement, except that a limited service representative shall provide the client, at the time of entering the brokerage agreement, copies of any and all disclosures required by federal or state law, or local disclosures expressly authorized by state law, and shall disclose to the client the following in writing: (i) the rights and obligations of the client under the Virginia Residential Property Disclosure Act (§ 55-517 et seq.); (ii) if the client is selling a condominium, the rights and obligations of the client to deliver to the purchasers, or to receive as purchaser, the condominium resale certificate required by § 55-79.97; and (iii) if the client is selling a property subject to the Property Owners' Association Act (§ 55-508 et seq.), the rights and obligations of the client to deliver to the purchasers, or to receive as purchaser, the association disclosure packet required by § 55-512. A limited service representative may act as the agent or representative of the client only by so providing in writing in the brokerage agreement. If the brokerage agreement does not so state, the limited service representative shall be deemed as acting as an independent contractor of the client.*



DISCIPLINARY ACTIONS

The Real Estate Board licenses and/or certifies real estate salespersons, brokers, firms, proprietary schools and prelicense instructors. If a complaint is filed against an individual or business that is subject to the laws and regulations of the Board, the complaint is reviewed to determine if a violation may have occurred and if so, an investigation is initiated. Subsequent to the investigation, the regulant is noticed to appear at an informal fact-finding conference approximately 30 days from the date of the notice; or he may be offered a prehearing consent order. A consent order is an agreement entered by the regulant and the Board, stipulating to violations of specific regulations and/or laws and a sanction. After the informal fact-finding conference is held, a recommendation will be submitted to the Board, for consideration at its next regularly scheduled meeting. Until a determination is made by the Board, the regulant can continue to practice. The Board can take the following actions: assess a monetary penalty; suspend or revoke a license; place an individual on probation; deny renewal; approve or deny a licensure application; or withdraw the approval of any school or instructor. All monetary penalties go to the State Literary Fund.

The public is now able to view copies of the Board's final orders and consent orders on its website www.dpor.virginia.gov. Click on License Lookup. A gray box will appear at the top of the screen with four links. Click on [Search Disciplinary Actions Occurring since 4/1/2002](#). A search page will appear, with directions on how to search. By entering Real Estate Board in the search box, you will get a list of all cases currently in the database.

The following cases are disciplinary actions rendered by the Board in May and July 2006:

<u>Case No.</u>	<u>Licensee</u>	<u>Violation</u>
2006-02425	Robert E. Dawson	18 VAC 135-20-220 Disclosure of Brokerage Relationships Fined \$500 plus \$150 investigation costs
2006-02797	Alan T. Thompson	18 VAC 135-20-260 Unworthiness and Incompetence Fined \$250 plus \$150 investigation costs; 2 hrs additional ce
2006-00473	Tyrone E. Youmans	18 VAC 135-20-260 Unworthiness and Incompetence 18 VAC 135-20-210 Disclosure of Interest 18 VAC 135-20-250 Response to Inquiry of the Board Fined \$7,500; license revoked
2005-04416	Elijah M. Wynn	18 VAC 135-20-260 Unworthiness and Incompetence 18 VAC 135-20-170 Maintenance of Licenses Fined \$3,000; license revoked
2006-01948	Wanda F. Snead	18 VAC 135-20-180 Maintenance and Management of Escrow Accounts Fined \$500 plus \$150 investigation costs
2006-00513	Lawanda H. Cregger	18 VAC 135-20-260 Unworthiness and Incompetence Fined \$ 350 investigation costs; license revoked
2006-02685	George H. Ross, Jr.	18 VAC 135-20-180 Maintenance and Management of Escrow Accounts 18 VAC 135-20-210 Disclosure of Interest Fined \$600 plus \$150 investigation costs
2006-03104	Richard W. Schoew	18 VAC 135-20-220 Disclosure of Brokerage Relationships 18 VAC 135-20-210 Disclosure of Interest Fined \$400 plus \$150 investigation costs

DISCIPLINARY ACTIONS (CONTD)

<u>Case No.</u>	<u>Licensee</u>	<u>Violation</u>
2006-03416	Mark A. Andrews	18 VAC 135-20-260 Unworthiness and Incompetence Probation for 3 years; Fined \$150 investigation costs
2006-02842	Margaret Percy Lee	18 VAC 135-20-180 Maintenance and Management of Escrow Accounts
2006-02532	t/a Lee Realty	18 VAC 135-20-185 Maintenance and Management of Financial Records 18 VAC 135-20-240 Provision of Records to the Board 18 VAC 135-20-260 Unworthiness and Incompetence Fined \$11,700; license revoked
2006-01377	John W. Hanna	18 VAC 135-20-240 Provision of Records to the Board 18 VAC 135-20-250 Response to Inquiry of the Board 18 VAC 135-20-260 Unworthiness and Incompetence 54.1-2135 Licensees Engaged to Manage Real Estate Fined \$4,500; license revoked
2006-02612	Robert W. Smith, Jr.	18 VAC 135-20-260 Unworthiness and Incompetence 18 VAC 135-20-185 Maintenance and Management of Financial Records Fined \$3,750; license suspended for one year
2006-01797	Darryl G. Drummond, Sr.	18 VAC 135-20-260 Unworthiness and Incompetence 54.1-2132 Licensees Engaged by Buyers Fined \$5,500 and \$ 150 investigation costs
2006-02622	Jessie E. Phelps	18 VAC 135-20-260 Unworthiness and Incompetence Fined \$1,500 and \$ 150 investigation costs; 3 hrs additional ce
2006-02507	George S. Warriner, Jr.	18 VAC 135-20-260 Unworthiness and Incompetence Fined \$150 investigation costs; quarterly reporting to the board
2006-04096	Aster Demissie	54.1-2135 Licensees Engaged to Manage Real Estate Fined \$ 250 and \$ 150 investigation costs; 2 hrs additional ce
2006-04266	Carolsue A. Lacy	18 VAC 135-20-300 Misrepresentation/Omission Fined \$ 250 and \$ 150 investigation costs
2006-02170	Donald L. Snead	18 VAC 135-20-180 Maintenance and Management of Escrow Accounts Fined \$ 750 and \$ 150 investigation costs
2006-04401	Donna L. Russell	18 VAC 135-20-260 Unworthiness and Incompetence Fined \$ 500 and \$ 150 investigation costs
2006-03821	Rajwant S. Virk	18 VAC 135-20-260 Unworthiness and Incompetence Fined \$ 150 investigation costs; licensure agreement for 2 yrs

DISCIPLINARY ACTIONS (CONTD)

<u>Case No.</u>	<u>Licensee</u>	<u>Violation</u>
2006-03199	Travis D. Carnes	18 VAC 135-20-300 Misrepresentation/Omission Fined \$600 plus \$150 investigation costs
2006-02030	Lisa R. Sanders	18 VAC 135-20-180 Maintenance and Management of Escrow Accounts 18 VAC 135-20-310 Delivery of Instruments 54.1-2132 Licensees Engaged by Buyers Fined \$1300 plus \$150 investigation costs; 4 hrs additional ce
2006-02202	Marilyn E. Wallace	18 VAC 135-20-210 Disclosure of Interest License revoked
2006-03895	Noel W. Brown	18 VAC 135-20-260 Unworthiness and Incompetence Fined \$150 investigation costs

The Board made a finding of reasonable cause or approved conciliation agreements, for the following fair housing cases:

<u>Action</u>	<u>Case No.</u>	<u>Case Name</u>
Conciliation Agreement	2005-04502	(correction) Lisa Ann Ritchie v. Denise I. Craft, Regional Mgr., and T.M. Associates Management, Inc., and Massanutten Elderly, LLC.
Failed to Make Reasonable Accommodation	2005-04941	Bernadette Chamberlin v. Felicitas White, Patricia Waddy, Cafritz Company Real Estate Services and Lance K. Ford (No finding against Lance K. Ford)
Familial Status	2005-00450	Corey Ogletree v. Sonia Lownsbury and Eudailey Referral Svc (Finding against Sonia Lownsbury only)
Retaliation	2006-01833	Daryll Johnson v. Motley's Auction Realty Group and Mark Motley
Conciliation Agreement	2006-00440	Lashi Carroll-Jones and James Simms v. Michael Hunt & Genesis Properties
Conciliation Agreement	2006-04462	Lesly Bolton v. Stephanie Settle, Sherri Layton, Lori Houston, Steve Boyce, Remington Place Limited Partnership, and S.L.. Nusbaum Realty Company

Friendly Reminders and Helpful Hints

How to Stay Out of Trouble and Keep Your License

- ◆ Report all felony convictions to the Board
- ◆ Report all misdemeanor convictions to the board involving moral turpitude (lying, cheating or stealing), sexual offense, drug distribution or physical injury
- ◆ Disclose agency relationships



- ◆ Disclose interest in properties
- ◆ Notify the Board of a change in your address

DID YOU KNOW???

To renew your license, without incurring a late fee, you must complete the required education **and** pay the renewal fee, within 30 days of the expiration date. If you are using out of state credits, they must be submitted to the Board within 30 days of the expiration date.

Disclosure Packets and Resale Certificates

Disclosure Packets are required when a seller of a lot in a Property Owner Association accepts a contract to transfer ownership to another party. Per the Property Owners' Association (POA) Act, a seller must disclose in the purchase contract that the lot is subject to the POA Act and request from the association a disclosure packet (§55-511.A).

A Resale Certificate Package is required when a seller of a unit within a Condominium project decides to transfer ownership to another owner. Like the POA Act, §55-79.97.A. of the Condominium Act requires the unit owner to disclose in the purchase offer that the unit is part of a condominium project and request a resale certificate from the association.

A disclosure packet is the document created when a lot is sold and a resale certificate is for the sale of a condominium unit. The process a seller must exercise is the same and the purchaser has the same rights regardless of the type of sale.

The seller is responsible to contact their association to request a disclosure packet/resale certificate for their lot/unit. The property owner association has 14 days from the date the written request was received with the appropriate fee to provide the packet to the seller or the seller's authorized agent. A condominium association

may request payment prior to the issuance of the packet after receiving the written request from the seller.

The association has the responsibility to ensure the packet/certificate processed is specific to that lot/unit and to include all items as set forth in each statute. The association is also responsible for establishing the fee in



accordance with the statutes. Both the POA (§55-512) and the Condominium Act (§55-79.97) allow the association to collect a fee to produce the document so that the reproduction does not create a financial hardship for the association. The association, in accordance with the Acts, may collect "the actual cost" not to exceed \$0.10 per page in copying costs or a total of \$100, for all costs incurred in

DID YOU KNOW?

As of June 30, 2006, there are 139 proprietary schools; 69,824 individuals ; and 8,001 firms licensed by the Board. There are also 3,602 properties registered.

preparing the document with a few exceptions.

Sellers may access the agency's website at www.dpor.virginia.gov. Select "License Lookup." The third item in column 3 is "Property Registration". Click on Property Associations (this includes condominium associations) and go to step 2. Enter either part of the association's name or the zip code where the community is located, and then select SEARCH.

If a contact person or address is not provided, please contact the Common Interest Community Association Liaison office at 804-367-2941 to obtain more information.



COMMUNITY ASSOCIATION LIAISON

Cynthia Schrier, is the Real Estate Board's Community Association Liaison. Ms. Schrier is traveling throughout the state conducting "Meet Your Liaison" seminars. Her current schedule appears to the right.

For more information and to register, log onto <http://www.aliemarketing.com>.

Sept. 20, 2006	Richmond Area
Oct. 25, 2006	Suffolk
Nov. 6, 2006	Culpeper, Fredericksburg and Warrenton Area
Nov. 15, 2006	Leesburg (Northwest VA)
Mar. 31, 2007	Buggs Island (Southwest VA)

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